

Maryland Agricultural Land Preservation Program

SUBSEQUENT OWNERS OF AGRICULTURAL PRESERVATION PROPERTIES

This Fact Sheet describes the benefits and restrictions for the current owner of property on which the previous owner sold or donated a permanent agricultural preservation easement.

Welcome to the Agricultural Preservation Program

You are automatically a member of the agricultural preservation program if you have acquired property over which a previous owner placed a permanent agricultural preservation easement. Easement properties are protected by permanent agricultural conservation easements restricting the use of the land. The easement is recorded among the county's land records.

Now That You Own a Preserved Farm

You own some of Maryland's finest farmland and/or forestland. To qualify for an agricultural preservation easement, a property must meet certain criteria of productivity and size. While you were probably made aware of these restrictions on the farm by the previous owner or as a result of the title search when you purchased the property, this fact sheet will provide a brief summary of the restrictions and opportunities that are associated with such properties.

An agricultural preservation easement property cannot be used for residential, commercial, or industrial subdivision, development, or use beyond those permitted under the easement. Land under a single easement, even if made up of multiple separately-deeded parcels, cannot be separated or subdivided without permission of the Foundation's Board of Trustees.

Having an agricultural preservation easement on your property also provides certain key benefits.

- As a landowner, you have the security of knowing that the land and any nearby preserved properties are permanently protected from development. With this security, as a farm and/or forest operator, you will be more confident to adopt improvements and make investments in the farming operation because of the permanent commitment of the property to agricultural use. If you are a landowner leasing your property to another farmer, you will be more willing to commit to a long-term lease, reducing the

costs and uncertainty to both you and the farmer who leases the property from you.

- The agricultural preservation easement is an acknowledgement by the State and the county that farming and forestry are the preferred uses of the land, enhancing legal protections associated with "right-to-farm" legislation and ordinances. While the "right-to-farm" protections cannot be guaranteed, such an acknowledgement is useful evidence if you must defend yourself against a nuisance complaint against your farming activities filed in court by rural neighbors unfamiliar and intolerant of normal agricultural activities.
- In some counties, properties enrolled in the Maryland Agricultural Land Preservation Program qualify for county property tax credits. Check with your local program administrator about benefits for which your property may qualify.

Development Options for Subsequent Landowners of Easement Properties

With one exception, the only persons eligible to construct a dwelling for themselves or their child on the preserved farm are those who sold the easement to the Foundation. Eligibility to apply for the release of family lots (owner and child) is extinguished when the property is sold or otherwise transferred.

The one exception that survives the transfer of the property occurs if the original seller of the easement chose the single unrestricted lot option and that lot has not yet been requested to be released. In this case, eligibility for that lot release conveys to subsequent owners until the lot release is requested, and its disposition is up to the owner of the unrestricted lot.

Though you probably do not have eligibility to apply for the release of one-acre lots for yourself or your children as the original easement seller did, you still may have other options, should they be of benefit to you and your specific circumstances.

- Existing Dwellings – On easement properties whose option contract was approved before October 1, 2003, any principal dwelling or tenant houses that existed at the time of settlement on the easement can be excluded from the restrictions of the easement and conveyed to others surrounded by a lot of up to one acre. If the easement was based on an offer approved after October 1, 2003, a subsequent owner cannot exclude a pre-existing dwelling from the easement unless eligibility for an unrestricted lot has conveyed with the property. If eligibility for an unrestricted lot still remains, excluding a pre-existing dwelling from the easement can be done by using your eligibility for that unrestricted lot. Contact your local program administrator if you wish to apply to the Foundation for approval of such a lot exclusion for a pre-existing dwelling. Also consult the fact sheet on the release of lots associated with a pre-existing house.
- Unrestricted Lot - If the original seller of the easement chose the single unrestricted lot option and that lot has not yet been requested to be released, you as a subsequent landowner are eligible to request the release of this lot for your use or for sale or development in the commercial market. You may also choose not to release this lot, but either convey it to subsequent owners

or to extinguish your eligibility by donating it back to the Foundation in return for the tax benefits that derive from such a charitable contribution. If an unrestricted lot has been conveyed to you with your purchase of the preserved property, contact your local program administrator for additional information. Also consult the fact sheets on lot releases.

- Tenant Houses - The Foundation defines a tenant house as a dwelling built exclusively for the purpose of housing a tenant fully engaged in the operation of the farm. A tenant house is not a right; its approval is based on the need for a tenant for the farming operation. (An owner of the property cannot also be its tenant and cannot occupy a Foundation-approved tenant house.) After Foundation approval, you may construct tenant houses at a density of one tenant house per full 100 acres. The size and location of a tenant house must be approved by the Foundation's Board of Trustees. A tenant house is considered an accessory structure and cannot be larger than 2,000 square feet. Tenant houses approved by the Foundation cannot be subdivided or conveyed separately from the original parcel, and the land beneath and surrounding the house cannot be released from easement restrictions. Contact your local program administrator if you qualify, have a compelling need for a tenant house for your farming operation, and wish to apply to the Foundation for approval to construct a tenant house on your property. Also consult the fact sheet on tenant houses.
- Agricultural Subdivision - The original easement property may be subdivided for agricultural purposes *only with Foundation approval*, even if it is composed of more than one parcel originally titled separately. Agricultural subdivision is not a right, but the Foundation recognizes that certain unusual circumstances may justify agricultural subdivision. The approval of an agricultural subdivision is based on the agricultural purpose of the subdivision. The Foundation will not approve agricultural subdivision, for example, to create or enlarge a residential lot or to divide a farm between heirs. Similarly, the Foundation will not approve an agricultural subdivision resulting in less cost-efficient farming. The Foundation's policy is that the parcel conveyed must be substantial enough in size that it maintains viable agricultural utility. Both the subdivided portion and the remaining parcel must be at least 50 acres, and each parcel must meet the minimum soils requirement for district establishment. Contact your local program administrator and/or consult the fact sheet on agricultural subdivision for more information and/or if you wish to apply to the Foundation for approval for an agricultural subdivision of your property.

Thank You

As a subsequent owner, your support in preserving Maryland agriculture becomes more important every year. We are proud to lead the nation in the farmland acreage preserved for future production, but we must rely on people like you to maintain productive stewardship of the land. Please consult your deed of easement, this website, your local program administrator, and/or the Maryland Agricultural Land Preservation Foundation if you have any questions about the program of which you are now a part.

This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

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<http://www.malpf.info/facts/fact13.pdf>